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ATTORNEYS FOR PLAINTIFF

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RUSSELL BRADBERRY, individually and on
behalf of a class of similarly situated
individuals,

Plaintiff,

v.

MBLOX, INC., a Delaware corporation,

Defendant.

Case No.C-07-5298 PJH

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO REMAND**

Hearing Date: December 19, 2008

Time: 9:00 a.m.

Dept.: Crtrm. 3, 17th Flr.

The Honorable Phyllis J. Hamilton

CLASS ACTION

PLAINTIFF'S NOTICE OF MOTION AND MOTION TO REMAND
Case No. C-07-5298 PJH

1 TO DEFENDANT AND ITS ATTORNEY OF RECORD HEREIN:

2 PLEASE TAKE NOTICE that on December 19, 2007, at 9:00 a.m., in Courtroom 3
3 of the above-entitled Court, Plaintiff Russell Bradberry, individually and on behalf of a class
4 of similarly situated individuals, will appear before the Honorable Phyllis J. Hamilton, and
5 then and there present his Motion to Remand:

6 1. Pursuant to the provisions of 28 U.S.C. § 1447(c), Plaintiff moves to have
7 this case remanded to the Superior Court of Santa Clara County, California. Defendant's
8 removal of this case from that court to this Court was improper and contrary to well-
9 established law on the subject. This Court lacks subject-matter jurisdiction over the case.
10 The case should be forthwith remanded to the Superior Court of Santa Clara County,
11 California, and with attorney's fees awarded to Plaintiff.

12 2. The burden is on Defendant to show by a preponderance of the evidence that
13 removal is proper, and it cannot sustain that burden. Defendant suggests two bases for
14 jurisdiction in this Court to support removal: (a) CAFA (28 U.S.C. §§ 1332(d) and 1453),
15 and (b) supplemental jurisdiction under 28 U.S.C. § 1367 (a). As is set forth in Plaintiff's
16 contemporaneously-filed Memorandum In Support Of Plaintiff's Motion To Remand, neither
17 basis can be countenanced. Defendant's fails to satisfy its burden of proving that claimed
18 damages are in excess of \$5 million as required for CAFA removal, and, as a matter of law,
19 Defendant cannot rely upon 28 U.S.C. § 1367(a) to support jurisdiction in this Court.

20 3. Plaintiff incorporates herein by reference his Memorandum In Support Of
21 Plaintiff's Motion To Remand.

22 This Motion will be based on this Notice and Motion, and the supporting
23 Memorandum filed herewith, and on the files and records of this Court, and such argument as
24 may be permitted at the hearing.

25 WHEREFORE, it is respectfully requested that this Court forthwith remand this
26 action to the Superior Court of Santa Clara County, California, from whence it was
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1 improperly removed, and that the Court award Plaintiff his attorney's fees and such further or
2 additional relief as the Court shall deem appropriate.

3
4 Respectfully submitted,

5 Dated: November 5, 2007

LAW OFFICES OF TERRY M. GORDON

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7 By: /s/ Terry M. Gordon

8 TERRY M. GORDON
9 One of the Attorneys for RUSSELL
10 BRADBERRY, individually and on
11 behalf of a class of similarly situated
12 individuals
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